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26 Attorneys for Defendant
27 REACTION NUTRITION, LLC

28 UNITED STATES DISTRICT COURT
29 CENTRAL DISTRICT OF CALIFORNIA

30 THERMOLIFE INTERNATIONAL,
31 LLC,

32 Plaintiff,

33 v.

34 BETTER BODY SPORTS, LLC, et
35 al.

36 Defendants.

37 CASE NO. CV12-09229 GAF (FFMx)

38 Hon. Gary A. Feess
39 Courtroom 740

40 DEFENDANT REACTION
41 NUTRITION, LLC'S ANSWER TO
42 PLAINTIFF'S COMPLAINT FOR
43 PATENT INFRINGEMENT,
44 AFFIRMATIVE DEFENSES,
45 COUNTERCLAIMS AND DEMAND
46 FOR JURY TRIAL

47 Action Filed: October 26, 2012
48 Trial Date: None set

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54 BY:
55 CLERK U.S. DISTRICT COURT
56 CENTRAL DIST. OF CALIF.
57 LOS ANGELES

58 FILED

1 Now comes the Defendant, Reaction Nutrition, LLC ("Reaction Nutrition"),
2 and for its answer, affirmative defenses and counterclaims, alleges as follows:

3 **I. THE PARTIES**

4 1. Reaction Nutrition is without information sufficient to form a belief as
5 to the truth of the allegations in paragraph one of the Plaintiff's Complaint and
6 calls upon Plaintiff to prove the same.

7 2. Reaction Nutrition is without information sufficient to form a belief as
8 to the truth of the allegations in paragraph two of the Plaintiff's Complaint and
9 calls upon Plaintiff to prove the same.

10 3. Reaction Nutrition is without information sufficient to form a belief as
11 to the truth of the allegations in paragraph three of the Plaintiff's Complaint and
12 calls upon Plaintiff to prove the same.

13 4. Reaction Nutrition is without information sufficient to form a belief as
14 to the truth of the allegations in paragraph four of the Plaintiff's Complaint and
15 calls upon Plaintiff to prove the same.

16 5. Reaction Nutrition is without information sufficient to form a belief as
17 to the truth of the allegations in paragraph five of the Plaintiff's Complaint and
18 calls upon Plaintiff to prove the same.

19 6. Reaction Nutrition is without information sufficient to form a belief as
20 to the truth of the allegations in paragraph six of the Plaintiff's Complaint and calls
21 upon Plaintiff to prove the same.

22 7. Reaction Nutrition is without information sufficient to form a belief as
23 to the truth of the allegations in paragraph seven of the Plaintiff's Complaint and
24 calls upon Plaintiff to prove the same.

25 8. Reaction Nutrition is without information sufficient to form a belief as
26 to the truth of the allegations in paragraph eight of the Plaintiff's Complaint and
27 calls upon Plaintiff to prove the same.

1 9. Reaction Nutrition is without information sufficient to form a belief as
2 to the truth of the allegations in paragraph nine of the Plaintiff's Complaint and
3 calls upon Plaintiff to prove the same.

4 10. Reaction Nutrition is without information sufficient to form a belief as
5 to the truth of the allegations in paragraph ten of the Plaintiff's Complaint and calls
6 upon Plaintiff to prove the same.

7 11. Reaction Nutrition is without information sufficient to form a belief as
8 to the truth of the allegations in paragraph eleven of the Plaintiff's Complaint and
9 calls upon Plaintiff to prove the same.

10 12. Reaction Nutrition is without information sufficient to form a belief as
11 to the truth of the allegations in paragraph twelve of the Plaintiff's Complaint and
12 calls upon Plaintiff to prove the same.

13 13. Reaction Nutrition is without information sufficient to form a belief as
14 to the truth of the allegations in paragraph thirteen of the Plaintiff's Complaint and
15 calls upon Plaintiff to prove the same.

16 14. Reaction Nutrition is without information sufficient to form a belief as
17 to the truth of the allegations in paragraph fourteen of the Plaintiff's Complaint and
18 calls upon Plaintiff to prove the same.

19 15. Reaction Nutrition is without information sufficient to form a belief as
20 to the truth of the allegations in paragraph fifteen of the Plaintiff's Complaint and
21 calls upon Plaintiff to prove the same.

22 16. Admitted.

23 17. Reaction Nutrition is without information sufficient to form a belief as
24 to the truth of the allegations in paragraph seventeen of the Plaintiff's Complaint
25 and calls upon Plaintiff to prove the same.

1 18. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph eighteen of the Plaintiff's Complaint and
 3 calls upon Plaintiff to prove the same.

4 19. Reaction Nutrition is without information sufficient to form a belief as
 5 to the truth of the allegations in paragraph nineteen of the Plaintiff's Complaint and
 6 calls upon Plaintiff to prove the same.

7 20. Reaction Nutrition is without information sufficient to form a belief as
 8 to the truth of the allegations in paragraph twenty of the Plaintiff's Complaint and
 9 calls upon Plaintiff to prove the same.

10 21. Reaction Nutrition is without information sufficient to form a belief as
 11 to the truth of the allegations in paragraph twenty-one of the Plaintiff's Complaint
 12 and calls upon Plaintiff to prove the same.

13 **II. JURISDICTION AND VENUE**

14 22. Admitted in part. Reaction Nutrition admits the complaint alleges an
 15 action for patent infringement under Title 35 of the United States Code. Reaction
 16 Nutrition is without information sufficient to form a belief as to the truth of the
 17 allegations in paragraph twenty-two of the Plaintiff's Complaint and calls upon
 18 Plaintiff to prove the same.

19 23. Denied.

20 24. Reaction Nutrition is without information sufficient to form a belief as
 21 to the truth of the allegations set forth in paragraph twenty-four of the Plaintiff's
 22 Complaint and calls upon Plaintiff to prove the same.

23 25. Reaction Nutrition is without information sufficient to form a belief as
 24 to the truth of the allegations in paragraph twenty-five of the Plaintiff's Complaint
 25 and calls upon Plaintiff to prove the same.

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III. THE DEFENDANTS' INFRINGING PRODUCTS

A. FACTS COMMON TO ALL INFRINGING PRODUCTS AND EACH DEFENDANT

26. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-six of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

27. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-seven of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

28. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-eight of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

29. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-nine of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

30. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

31. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-one of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

32. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-two of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

33. Reaction Nutrition is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-three of the Plaintiff's Complaint and calls upon Plaintiff to prove the same.

1 34. Reaction Nutrition is without information sufficient to form a belief as
2 to the truth of the allegations in paragraph thirty-four of the Plaintiff's Complaint
3 and calls upon Plaintiff to prove the same.

4 35. Denied.

5 36. Reaction Nutrition is without information sufficient to form a belief as
6 to the truth of the allegations in paragraph thirty-six of the Plaintiff's Complaint
7 and calls upon Plaintiff to prove the same.

8 37. Reaction Nutrition is without information sufficient to form a belief as
9 to the truth of the allegations in paragraph thirty-seven of the Plaintiff's Complaint
10 and calls upon Plaintiff to prove the same.

11 38. Denied.

12 **B. PRODUCT-SPECIFIC DETAILS**

13 **"D-Aspartic Acid" (Defendant Better Body Sports' Infringing Product)**

14 39. Reaction Nutrition is without information sufficient to form a belief as
15 to the truth of the allegations in paragraph thirty-nine of the Plaintiff's Complaint
16 and calls upon Plaintiff to prove the same.

17 40. Reaction Nutrition is without information sufficient to form a belief as
18 to the truth of the allegations in paragraph forty of the Plaintiff's Complaint and
19 calls upon Plaintiff to prove the same.

20 **"Hyper FX" (One of Defendant BSN's Infringing Products)**

21 41. Reaction Nutrition is without information sufficient to form a belief as
22 to the truth of the allegations in paragraph forty-one of the Plaintiff's Complaint
23 and calls upon Plaintiff to prove the same.

24 42. Reaction Nutrition is without information sufficient to form a belief as
25 to the truth of the allegations in paragraph forty-two of the Plaintiff's Complaint
26 and calls upon Plaintiff to prove the same.

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1 43. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph forty-three of the Plaintiff's Complaint
 3 and calls upon Plaintiff to prove the same.

4 44. Reaction Nutrition is without information sufficient to form a belief as
 5 to the truth of the allegations in paragraph forty-four of the Plaintiff's Complaint
 6 and calls upon Plaintiff to prove the same.

7 **"Evotest" (Defendant BSN's Second Infringing Product)**

8 45. Reaction Nutrition is without information sufficient to form a belief as
 9 to the truth of the allegations in paragraph forty-five of the Plaintiff's Complaint
 10 and calls upon Plaintiff to prove the same.

11 46. Reaction Nutrition is without information sufficient to form a belief as
 12 to the truth of the allegations in paragraph forty-six of the Plaintiff's Complaint
 13 and calls upon Plaintiff to prove the same.

14 47. Reaction Nutrition is without information sufficient to form a belief as
 15 to the truth of the allegations in paragraph forty-seven of the Plaintiff's Complaint
 16 and calls upon Plaintiff to prove the same.

17 48. Reaction Nutrition is without information sufficient to form a belief as
 18 to the truth of the allegations in paragraph forty-eight of the Plaintiff's Complaint
 19 and calls upon Plaintiff to prove the same.

20 **"D-Aspartic Acid" (Defendant Allmax's Infringing Product)**

21 49. Reaction Nutrition is without information sufficient to form a belief as
 22 to the truth of the allegations in paragraph forty-nine of the Plaintiff's Complaint
 23 and calls upon Plaintiff to prove the same.

24 50. Reaction Nutrition is without information sufficient to form a belief as
 25 to the truth of the allegations in paragraph fifty of the Plaintiff's Complaint and
 26 calls upon Plaintiff to prove the same.

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1 51. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph fifty-one of the Plaintiff's Complaint
 3 and calls upon Plaintiff to prove the same.

4 **"DAA Pure" (Defendant Performance Edge's Infringing Product)**

5 52. Reaction Nutrition is without information sufficient to form a belief as
 6 to the truth of the allegations in paragraph fifty-two of the Plaintiff's Complaint
 7 and calls upon Plaintiff to prove the same.

8 53. Reaction Nutrition is without information sufficient to form a belief as
 9 to the truth of the allegations in paragraph fifty-three of the Plaintiff's Complaint
 10 and calls upon Plaintiff to prove the same.

11 **"Propadrol" (Defendant EST Nutrition's Infringing Product)**

12 54. Reaction Nutrition is without information sufficient to form a belief as
 13 to the truth of the allegations in paragraph fifty-four of the Plaintiff's Complaint
 14 and calls upon Plaintiff to prove the same.

15 55. Reaction Nutrition is without information sufficient to form a belief as
 16 to the truth of the allegations in paragraph fifty-five of the Plaintiff's Complaint
 17 and calls upon Plaintiff to prove the same.

18 56. Reaction Nutrition is without information sufficient to form a belief as
 19 to the truth of the allegations in paragraph fifty-six of the Plaintiff's Complaint and
 20 calls upon Plaintiff to prove the same.

21 **"Bullasterone" (Defendant Hi-Tech's Infringing Product)**

22 57. Reaction Nutrition is without information sufficient to form a belief as
 23 to the truth of the allegations in paragraph fifty-seven of the Plaintiff's Complaint
 24 and calls upon Plaintiff to prove the same.

25 58. Reaction Nutrition is without information sufficient to form a belief as
 26 to the truth of the allegations in paragraph fifty-eight of the Plaintiff's Complaint
 27 and calls upon Plaintiff to prove the same.

1 59. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph fifty-nine of the Plaintiff's Complaint
 3 and calls upon Plaintiff to prove the same.

4 60. Reaction Nutrition is without information sufficient to form a belief as
 5 to the truth of the allegations in paragraph sixty of the Plaintiff's Complaint and
 6 calls upon Plaintiff to prove the same.

7 61. Reaction Nutrition is without information sufficient to form a belief as
 8 to the truth of the allegations in paragraph sixty-one of the Plaintiff's Complaint
 9 and calls upon Plaintiff to prove the same.

10 **"Dagger" (Defendant Infinite Labs' Infringing Product)**

11 62. Reaction Nutrition is without information sufficient to form a belief as
 12 to the truth of the allegations in paragraph sixty-two of the Plaintiff's Complaint
 13 and calls upon Plaintiff to prove the same.

14 63. Reaction Nutrition is without information sufficient to form a belief as
 15 to the truth of the allegations in paragraph sixty-three of the Plaintiff's Complaint
 16 and calls upon Plaintiff to prove the same.

17 64. Reaction Nutrition is without information sufficient to form a belief as
 18 to the truth of the allegations in paragraph sixty-four of the Plaintiff's Complaint
 19 and calls upon Plaintiff to prove the same.

20 **"Intratest Xtreme" (Defendant Lecheek's First Infringing Product)**

21 65. Reaction Nutrition is without information sufficient to form a belief as
 22 to the truth of the allegations in paragraph sixty-five of the Plaintiff's Complaint
 23 and calls upon Plaintiff to prove the same.

24 66. Reaction Nutrition is without information sufficient to form a belief as
 25 to the truth of the allegations in paragraph sixty-six of the Plaintiff's Complaint
 26 and calls upon Plaintiff to prove the same.

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1 67. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph sixty-seven of the Plaintiff's Complaint
 3 and calls upon Plaintiff to prove the same.

4 **"Speed X3" (Defendant Lecheek's Second Infringing Product)**

5 68. Reaction Nutrition is without information sufficient to form a belief as
 6 to the truth of the allegations in paragraph sixty-eight of the Plaintiff's Complaint
 7 and calls upon Plaintiff to prove the same.

8 69. Reaction Nutrition is without information sufficient to form a belief as
 9 to the truth of the allegations in paragraph sixty-nine of the Plaintiff's Complaint
 10 and calls upon Plaintiff to prove the same.

11 70. Reaction Nutrition is without information sufficient to form a belief as
 12 to the truth of the allegations in paragraph seventy of the Plaintiff's Complaint and
 13 calls upon Plaintiff to prove the same.

14 **"Testrodol X9" (Defendant Lecheek's Third Infringing Product)**

15 71. Reaction Nutrition is without information sufficient to form a belief as
 16 to the truth of the allegations in paragraph seventy-one of the Plaintiff's Complaint
 17 and calls upon Plaintiff to prove the same.

18 72. Reaction Nutrition is without information sufficient to form a belief as
 19 to the truth of the allegations in paragraph seventy-two of the Plaintiff's Complaint
 20 and calls upon Plaintiff to prove the same.

21 73. Reaction Nutrition is without information sufficient to form a belief as
 22 to the truth of the allegations in paragraph seventy-three of the Plaintiff's
 23 Complaint and calls upon Plaintiff to prove the same.

24 **"X-Fit Power" (Defendant MHP's Infringing Product)**

25 74. Reaction Nutrition is without information sufficient to form a belief as
 26 to the truth of the allegations in paragraph seventy-four of the Plaintiff's Complaint
 27 and calls upon Plaintiff to prove the same.

1 75. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph seventy-five of the Plaintiff's Complaint
 3 and calls upon Plaintiff to prove the same.

4 76. Reaction Nutrition is without information sufficient to form a belief as
 5 to the truth of the allegations in paragraph seventy-six of the Plaintiff's Complaint
 6 and calls upon Plaintiff to prove the same.

7 77. Reaction Nutrition is without information sufficient to form a belief as
 8 to the truth of the allegations in paragraph seventy-seven of the Plaintiff's
 9 Complaint and calls upon Plaintiff to prove the same.

10 **"NMDA" (Defendant Muscle Warfare's First Infringing Product)**

11 78. Reaction Nutrition is without information sufficient to form a belief as
 12 to the truth of the allegations in paragraph seventy-eight of the Plaintiff's
 13 Complaint and calls upon Plaintiff to prove the same.

14 79. Reaction Nutrition is without information sufficient to form a belief as
 15 to the truth of the allegations in paragraph seventy-nine of the Plaintiff's
 16 Complaint and calls upon Plaintiff to prove the same.

17 **"MOAB" (Defendant Muscle Warfare's Second Infringing Product)**

18 80. Reaction Nutrition is without information sufficient to form a belief as
 19 to the truth of the allegations in paragraph eighty of the Plaintiff's Complaint and
 20 calls upon Plaintiff to prove the same.

21 81. Reaction Nutrition is without information sufficient to form a belief as
 22 to the truth of the allegations in paragraph eighty-one of the Plaintiff's Complaint
 23 and calls upon Plaintiff to prove the same.

24 **"Nuke" (Defendant Muscle Warfare's Third Infringing Product)**

25 82. Reaction Nutrition is without information sufficient to form a belief as
 26 to the truth of the allegations in paragraph eighty-two of the Plaintiff's Complaint
 27 and calls upon Plaintiff to prove the same.

1 83. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph eighty-three of the Plaintiff's Complaint
 3 and calls upon Plaintiff to prove the same.

4 **"Napalm" (Defendant Muscle Warfare's Fourth Infringing Product)**

5 84. Reaction Nutrition is without information sufficient to form a belief as
 6 to the truth of the allegations in paragraph eighty-four of the Plaintiff's Complaint
 7 and calls upon Plaintiff to prove the same.

8 85. Reaction Nutrition is without information sufficient to form a belief as
 9 to the truth of the allegations in paragraph eighty-five of the Plaintiff's Complaint
 10 and calls upon Plaintiff to prove the same.

11 **"T-Up" (Defendant Nutrex's Infringing Product)**

12 86. Reaction Nutrition is without information sufficient to form a belief as
 13 to the truth of the allegations in paragraph eighty-six of the Plaintiff's Complaint
 14 and calls upon Plaintiff to prove the same.

15 87. Reaction Nutrition is without information sufficient to form a belief as
 16 to the truth of the allegations in paragraph eighty-seven of the Plaintiff's
 17 Complaint and calls upon Plaintiff to prove the same.

18 88. Reaction Nutrition is without information sufficient to form a belief as
 19 to the truth of the allegations in paragraph eighty-eight of the Plaintiff's Complaint
 20 and calls upon Plaintiff to prove the same.

21 89. Reaction Nutrition is without information sufficient to form a belief as
 22 to the truth of the allegations in paragraph eighty-nine of the Plaintiff's Complaint
 23 and calls upon Plaintiff to prove the same.

24 **"Anabolic Freak" (Defendant PharmaFreak Infringing Product)**

25 90. Reaction Nutrition is without information sufficient to form a belief as
 26 to the truth of the allegations in paragraph ninety of the Plaintiff's Complaint and
 27 calls upon Plaintiff to prove the same.

1 91. Reaction Nutrition is without information sufficient to form a belief as
2 to the truth of the allegations in paragraph ninety-one of the Plaintiff's Complaint
3 and calls upon Plaintiff to prove the same.

4 **"D-pol" (Defendant Purus' Infringing Product)**

5 92. Reaction Nutrition is without information sufficient to form a belief as
6 to the truth of the allegations in paragraph ninety-two of the Plaintiff's Complaint
7 and calls upon Plaintiff to prove the same.

8 93. Reaction Nutrition is without information sufficient to form a belief as
9 to the truth of the allegations in paragraph ninety-three of the Plaintiff's Complaint
10 and calls upon Plaintiff to prove the same.

11 94. Reaction Nutrition is without information sufficient to form a belief as
12 to the truth of the allegations in paragraph ninety-four of the Plaintiff's Complaint
13 and calls upon Plaintiff to prove the same.

14 95. Reaction Nutrition is without information sufficient to form a belief as
15 to the truth of the allegations in paragraph ninety-five of the Plaintiff's Complaint
16 and calls upon Plaintiff to prove the same.

17 **"Warrior" (Defendant Reaction's Infringing Product)**

18 96. Admitted.

19 97. Reaction Nutrition admits in part that Defendant All Star is a retailer
20 and distributor of Defendant Reaction Nutrition's products. Reaction Nutrition is
21 without information sufficient to form a belief as to the truth of the allegations in
22 paragraph ninety-seven of the Plaintiff's Complaint and calls upon Plaintiff to
23 prove the same.

24 98. Reaction Nutrition is without information sufficient to form a belief as
25 to the truth of the allegations in paragraph ninety-eight of the Plaintiff's Complaint
26 and calls upon Plaintiff to prove the same.

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1 **“Vitality DM” (Defendant Reaction’s Other Infringing Product)**

2 99. Admitted.

3 100. Reaction Nutrition admits in part that Defendant All Star is a retailer
 4 and distributor of Defendant Reaction Nutrition’s products. Reaction Nutrition is
 5 without information sufficient to form a belief as to the truth of the allegations in
 6 paragraph one hundred of the Plaintiff’s Complaint and calls upon Plaintiff to
 7 prove the same.

8 101. Reaction Nutrition is without information sufficient to form a belief as
 9 to the truth of the allegations in paragraph one hundred and one of the Plaintiff’s
 10 Complaint and calls upon Plaintiff to prove the same.

11 **“Pure Test” (Defendant Finaflex’s Infringing Product)**

12 102. Reaction Nutrition is without information sufficient to form a belief as
 13 to the truth of the allegations in paragraph one hundred and two of the Plaintiff’s
 14 Complaint and calls upon Plaintiff to prove the same.

15 103. Reaction Nutrition is without information sufficient to form a belief as
 16 to the truth of the allegations in paragraph one hundred and three of the Plaintiff’s
 17 Complaint and calls upon Plaintiff to prove the same.

18 104. Reaction Nutrition is without information sufficient to form a belief as
 19 to the truth of the allegations in paragraph one hundred and four of the Plaintiff’s
 20 Complaint and calls upon Plaintiff to prove the same.

21 105. Reaction Nutrition is without information sufficient to form a belief as
 22 to the truth of the allegations in paragraph one hundred and five of the Plaintiff’s
 23 Complaint and calls upon Plaintiff to prove the same.

24 **“Revolution PCT” (Defendant Finaflex’s Second Infringing Product)**

25 106. Reaction Nutrition is without information sufficient to form a belief as
 26 to the truth of the allegations in paragraph one hundred and six of the Plaintiff’s
 27 Complaint and calls upon Plaintiff to prove the same.

1 107. Reaction Nutrition is without information sufficient to form a belief as
 2 to the truth of the allegations in paragraph one hundred and seven of the Plaintiff's
 3 Complaint and calls upon Plaintiff to prove the same.

4 108. Reaction Nutrition is without information sufficient to form a belief as
 5 to the truth of the allegations in paragraph one hundred and eight of the Plaintiff's
 6 Complaint and calls upon Plaintiff to prove the same.

7 109. Reaction Nutrition is without information sufficient to form a belief as
 8 to the truth of the allegations in paragraph one hundred and nine of the Plaintiff's
 9 Complaint and calls upon Plaintiff to prove the same.

10 **"Ignite 2" (Defendant Finaflex's Third Infringing Product)**

11 110. Reaction Nutrition is without information sufficient to form a belief as
 12 to the truth of the allegations in paragraph one hundred and ten of the Plaintiff's
 13 Complaint and calls upon Plaintiff to prove the same.

14 111. Reaction Nutrition is without information sufficient to form a belief as
 15 to the truth of the allegations in paragraph one hundred and eleven of the Plaintiff's
 16 Complaint and calls upon Plaintiff to prove the same.

17 112. Reaction Nutrition is without information sufficient to form a belief as
 18 to the truth of the allegations in paragraph one hundred and twelve of the
 19 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

20 113. Reaction Nutrition is without information sufficient to form a belief as
 21 to the truth of the allegations in paragraph one hundred and thirteen of the
 22 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

23 **"V30+" (Defendant SNI's Infringing Product)**

24 114. Reaction Nutrition is without information sufficient to form a belief as
 25 to the truth of the allegations in paragraph one hundred and fourteen of the
 26 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

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1 115. Reaction Nutrition is without information sufficient to form a belief as
2 to the truth of the allegations in paragraph one hundred and fifteen of the Plaintiff's
3 Complaint and calls upon Plaintiff to prove the same.

4 **"D-Aspartic Acid" (Defendant Ethitech's Infringing Product)**

5 116. Reaction Nutrition is without information sufficient to form a belief as
6 to the truth of the allegations in paragraph one hundred and sixteen of the
7 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

8 117. Reaction Nutrition is without information sufficient to form a belief as
9 to the truth of the allegations in paragraph one hundred and seventeen of the
10 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

11 **IV. THE DEFENDANTS' INFRINGEMENTS**

12 118. Denied.

13 **A. DIRECT INFRINGEMENTS**

14 119. Denied.

15 120. Denied.

16 121. Denied.

17 **B. INDIRECT INFRINGEMENTS**

18 122. Denied.

19 123. Denied.

20 124. Denied.

21 125. Denied.

22 126. Denied.

23 127. Denied.

24 128. Denied.

25 129. Denied.

26 130. Denied.

1 131. Reaction Nutrition admits that Plaintiff sent communications to
2 Reaction Nutrition between June 2012 and October 2012 to notify them of the
3 patent and their alleged infringements. Reaction Nutrition is without information
4 sufficient to form a belief as to the truth of the remaining allegations contained in
5 paragraph one hundred and thirty-one of the Plaintiff's Complaint, and calls upon
6 Plaintiff to prove the same.

7 132. Reaction Nutrition is without information sufficient to form a belief as
8 to the truth of the allegations in paragraph one hundred and thirty-two of the
9 Plaintiff's Complaint and calls upon Plaintiff to prove the same.

10 133. Denied.

11 134. Denied.

12 135. Denied.

13 136. Denied.

14 137. Denied.

15 138. Denied.

16 139. Denied.

17 **V. FIRST CAUSE OF ACTION**

18 **Infringement of U.S. Patent No. 8,202,908**

19 140. Reaction Nutrition repeats and re-alleges its responses to the allegations
20 of the foregoing paragraphs of this Complaint as if fully set forth herein.

21 141. Denied.

22 142. Denied.

23 143. Denied.

24 144. Denied.

25 145. Denied.

26 146. Denied.

27 147. Denied.

1 148. Denied.
2 149. Denied.
3 150. Denied.
4 151. Denied.
5 152. Denied.
6 153. Denied.
7 154. Denied.
8 155. Denied.
9 156. Denied.
10 157. Denied.
11 158. Denied.
12 159. Denied.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 Plaintiff's Complaint fails to state a claim upon which relief may be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 Reaction Nutrition has not engaged in any acts that would constitute
18 infringement of any valid and enforceable patent in suit.

19 **THIRD AFFIRMATIVE DEFENSE**

20 The patent-in-suit is invalid for failure to comply with the statutory
21 provisions for patentability and validity set forth Title 35 of the United States
22 Code, including one or more of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and
23 256, for the following reasons:

24 a. The alleged invention was known or used by others in this country, or
25 patented or described in a printed publication in this or a foreign country, more
26 than one year prior to the date of the application for a patent in the United States.

1 b. The alleged invention was known or used by others in this country, or
2 patented or described in a printed publication in this or a foreign country or in
3 public use or on sale in this country, more than one year prior to the date of the
4 application for patent in the United States.

5 c. The alleged invention was described in a patent granted on an
6 application for a patent by another filed in the United States before the invention
7 thereof by the alleged patentees, or on an international application by another
8 which complied with the requisite statutes.

9 d. The patentees did not themselves invent the subject matter sought to
10 be patented.

11 e. Before the alleged invention by the patentees the alleged invention
12 was made in this country by another who had not abandoned, suppressed or
13 concealed it.

14 f. The alleged invention was obvious at the time of the invention to a
15 person having ordinary skill in the art.

16 g. The specifications of the patent does not comply with the
17 requirements set forth in 35 U.S.C. §112, including but not limited to the best
18 mode requirement and enablement requirement.

19 h. The patent does not particularly point out and distinctly claim the
20 invention.

21 i. One or more of the correct inventors were not named on the asserted
22 patent.

23 j. The inventor committed inequitable conduct before the United States
24 Patent and Trademark Office during the prosecution of the '908 patent, as specified
25 in greater detail below.

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FOURTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from asserting a scope for the claims of the asserted patent-in-suit that would cover any product made, used, sold and/or offered for sale by Reaction Nutrition by representations, arguments, and/or amendments made during prosecution of the asserted patent before the PTO.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any relief or recovery by reason of its coming into this Court with unclean hands in seeking to enforce patent that Plaintiff knew on information and belief to be invalid, unenforceable, and/or not infringed.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any equitable relief or recovery because it has a full, complete and adequate remedy at law.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any equitable relief or recovery because it has unclean hands.

COUNTERCLAIMS

Pursuant to Federal Rule of Civil Procedure 13, Reaction Nutrition's Counterclaims against Plaintiff are as follows:

THE PARTIES

1. The co-Defendant/Plaintiff-in-Counterclaim, Reaction Nutrition, LLC, is a company organized and existing under the laws of Pennsylvania with a principal place of business at 230 East Main Street in Carnegie, Pennsylvania, 15106-2700.

2. The Plaintiff/Defendant-in-Counterclaim allegedly is a limited liability company organized and existing under the laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice, California, 90291.

3. Defendant Better Body Sports, LLC is a named Defendant in this litigation.

4. Defendant Bio-Engineered Supplements and Nutrition, Inc. is a named Defendant in this litigation.

5. Defendant Allmax Nutrition Inc. is a named Defendant in this litigation.

6. Defendant Bronson Laboratories, Inc. d/b/a Performance Edge is a named Defendant in this litigation.

7. Defendant Engineered Sports Technology, LLC d/b/a EST Nutrition is a named Defendant in this litigation.

8. Defendant Hi-Tech Pharmaceuticals, Inc. d/b/a Hi-Tech is a named Defendant in this litigation.

9. Defendant Infinite Labs, LLC is a named Defendant in this litigation.

10. Defendant Lecheek, LLC is a named Defendant in this litigation.

11. Defendant Purus Labs, Inc. is a named Defendant in this litigation.

12. Defendant Muscle Warfare, Inc. is a named Defendant in this litigation.

13. Defendant Nutrex Research, Inc. is a named Defendant in this litigation.

14. Defendant PharmaFreak Holdings, Inc. is a named Defendant in this litigation.

15. Defendant Lone Star Distribution is a named Defendant in this litigation.

16. Defendant All Star Health is a named Defendant in this litigation.

17. Defendant Redefine Nutrition, LLC d/b/a Finaflex is a named Defendant in this litigation.

18. Defendant SNI, LLC is a named Defendant in this litigation.

19. Defendant Tiger Fitness, Inc. d/b/a Ethitech is a named Defendant in this litigation.

20. Maximum Human Performance, LLC is a named Defendant in this litigation.

JURISDICTION AND VENUE

21. This counterclaim is brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201, et seq. The Complaint in this action alleges that Reaction Nutrition has infringed the patent-in-suit and gives rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202.

22. This counterclaim arises under the patent laws of the United States, 35 U.S.C. § 1, et seq.

23. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1338, 2201, and 2202.

24. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1338, 2201, and 2202.

25. Venue for this Counterclaim in this District is proper under 28 U.S.C. §§ 1391 as this Counterclaim arises from the Complaint. Reaction Nutrition reserves the right to contest venue of the underlying action.

26. Reaction Nutrition is entitled to declaratory relief because, although Reaction Nutrition has not infringed and is not infringing the patent-in-suit, Reaction Nutrition will use accused apparatus and methods as claimed in the patent- in-suit after the patent-in-suit are declared not infringed, invalid, and/or unenforceable

FACTUAL BACKGROUND

27. On or about June 29, 2012, the United States Patent and Trademark Office issued U.S. Patent No. 8,202,908 (“the ‘908 patent”) entitled “D-Aspartic Acid Supplement,” indicating the inventor as Patrick Arnold and being assigned to

1 Thermolife International, LLC. The Plaintiff asserts the named Defendants
 2 allegedly committed the tort of patent infringement within the State of California,
 3 and allegedly infringed the '908 patent by either shipping, selling, distributing,
 4 offering for sale, advertising, or continued to ship, distribute, offer for sale and
 5 advertise the accused products listed in Plaintiff's Complaint in this judicial
 6 district.

7 **COUNT I**

8 **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)**

9 28. Reaction Nutrition repeats and realleges Paragraphs 1 through 27
 10 above, as though fully set forth herein.

11 29. Reaction Nutrition has not directly infringed and do not directly
 12 infringe any or all of the claims of the patent in suit under 35 U.S.C. § 271 (a).

13 30. Reaction Nutrition has not actively induced and does not actively
 14 induce infringement of any or all of claims of the patent in suit under 35 U.S.C. §
 15 271 (b).

16 31. Reaction Nutrition has not contributed to and does not contribute to
 17 infringement of any or all of the claims of the patent in suit under 35 U.S.C. § 271
 18 (c).

19 32. Reaction Nutrition is therefore entitled to a declaratory judgment that
 20 Reaction Nutrition does not directly or indirectly infringe any or all of the claims
 21 of the patent-in-suit and to such further injunctive relief as may be just and proper.

22 **COUNT II**

23 **(DECLARATORY JUDGMENT OF PATENT INVALIDITY)**

24 33. Reaction Nutrition incorporates the allegations set forth in paragraphs
 25 1 through 32 above by reference as if fully set forth herein.

26 34. The patent-in-suit are invalid for failure to comply with the statutory
 27 provisions for patentability and validity set forth Title 35 of the United States

1 Code, including one or more of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and
2 256, for the following reasons:

3 a. The alleged invention was known or used by others in this country, or
4 patented or described in a printed publication in this or a foreign country, more
5 than one year prior to the date of the application for a patent in the United States.

6 b. The alleged invention was known or used by others in this country, or
7 patented or described in a printed publication in this or a foreign country or in
8 public use or on sale in this country, more than one year prior to the date of the
9 application for patent in the United States.

10 c. The alleged invention was described in a patent granted on an
11 application for a patent by another filed in the United States before the invention
12 thereof by the alleged patentees, or on an international application by another
13 which complied with the requisite statutes.

14 d. The patentees did not themselves invent the subject matter sought to
15 be patented.

16 e. Before the alleged invention by the patentees the alleged invention
17 was made in this country by another who had not abandoned, suppressed or
18 concealed it.

19 f. The alleged invention was obvious at the time of the invention to a
20 person having ordinary skill in the art.

21 g. The specifications of the patent does not comply with the
22 requirements set forth in 35 U.S.C. §112, including but not limited to the best
23 mode requirement and enablement requirement.

24 h. The patent does not particularly point out and distinctly claim the
25 invention.

26 i. One or more of the correct inventors were not named on the asserted
27 patent.

35. Reaction Nutrition is therefore entitled to a declaratory judgment that some or all of the claims of the patent-in-suit are invalid and to such further relief as may be just and proper.

COUNT III
(INEQUITABLE CONDUCT)

36. Reaction Nutrition incorporates the allegations set forth in paragraphs 1 through 35 above by reference as if fully set forth herein.

37. D-aspartic acid is an enantiomer of aspartic acid and is known as dextrorotatory aspartic acid or by the abbreviations (+)-aspartic acid, (d)-aspartic acid, or D-aspartic acid.

38. On or about March 28, 2008, Patrick Arnold submitted a provisional patent application to the United States Patent and Trademark Office (hereinafter the "Patent Office") for a D-Aspartic acid supplement. The application was assigned application no. 61/072,254.

40. On or about March 27, 2009, Patrick Arnold filed a formal patent application, application no. 12/383,682, which claimed priority to provisional patent application no. 61/072,254.

41. The asserted '908 patent issued from the formal patent application filed on March 27, 2009, application no. 12/383,682.

42. The asserted '908 patent lists Patrick Arnold as the sole inventor.

43. On or about March 29, 2009, the inventor, Patrick Arnold, executed a *Declaration and Power of Attorney*, in which he acknowledged, *inter alia*, "the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56." The declaration was filed with the Patent Office.

44. In his patent application, no. 12/383682, Mr. Arnold represented to the Patent Office, *inter alia*, that:

No studies have examined the effects of D-aspartic acid or N-methyl-D-aspartate on male humans. It is well known that different species of mammals often have different responses to hormones. Therefore, it is unknown whether, and to what degree, the administration of D-aspartic acid compounds in different ways and at different levels to male humans causes an increase in levels of testosterone, growth hormone, and insulin-like growth factor 1.

Accordingly, there is a demand for a method of improving the physical condition of adult male humans of all ages by increasing their levels of testosterone, growth hormone, and insulin-like growth factor 1 without the administration of hormones or prohormones.

45. In his patent application, no. 12/383682, Mr. Arnold represented to the Patent Office, *inter alia*, that:

One general object of this invention is to provide an improved method of enhancing the physical condition of adult male humans of all ages by increasing their levels of testosterone, growth hormone, and/or insulin-like growth factor 1 without the administration of hormones.

I have invented a method of improving the physical condition of an adult male human. The method comprises administering an effective amount of a D-aspartic acid compound to an adult male human.

The method of this invention improves the physical condition of adult male humans of all ages by increasing their levels of testosterone, growth hormone, and/or insulin-like growth factor 1 without the administration of hormones. The method comprises the administration of D-aspartic acid and/or its biological equivalent derivate compounds. D-aspartic acid is a chemical that is present in the human body and is generally recognized as safe.

46. In his patent application, no. 12/383682, Mr. Arnold represented to the Patent Office, *inter alia*, that:

1. The Invention In General

The method of the invention comprises the administration of an effective amount of a D-aspartic acid compound to adult human males. It has been surprisingly found that the administration causes an increase in the levels of testosterone, growth hormone, and insulin-like growth factor 1. Increases in

1 these hormones cause, in turn, an improvement in the physical condition of
 2 the males.

3 **2. The D-Aspartic Acid Compound**

4 Suitable D-aspartic acid compounds include D-aspartic acid, D-aspartate
 5 salts, D-aspartate esters, and other functionally equivalent derivatives such
 6 as N-methyl-D-aspartic acid. The D-aspartic acid compound is suitable in its
 7 enantiomeric form or as the racemic mixture. The preferred compound is
 8 DL-aspartic acid because of its ready availability and low cost.

9 **3. Administration**

10 The D-aspartic acid compound is administered in any known way that
 11 results in the compound entering the bloodstream. For example, the
 12 compound is orally ingested, injected directly into the bloodstream,
 13 administered via patches, and the like. The preferred method of
 14 administration is by oral ingestion. D-aspartic acid is well tolerated and is
 15 effectively taken into the bloodstream through the digestive tract.

16 The D-aspartic acid compound is conveniently ingested as a powder or is
 17 dissolved in a suitable liquid. For example, D-aspartic acid has substantial
 18 solubility in water and is well suited for addition to conventional aqueous
 19 beverages. The D-aspartic acid may have synergistic results with other
 20 common nutritional supplements, such as androst-4-ene-3,6,17-trione,
 21 marketed as 6-OXO supplement by Proviant Technologies, Inc. of
 22 Champaign, Ill.

23 **4. Effective Amount**

24 The D-aspartic acid compound is administered in an amount that is effective
 25 to increase the levels of testosterone, growth hormone, and/or insulin-like
 26 growth factor 1 in the recipient. In general, the D-aspartic acid compound is
 27 administered in an amount of about 1 to 100 grams per day, preferably about
 28 1 to 20 grams per day, and most preferably about 5 to 10 grams per day,
 computed on the basis of equivalent molar amount of D-aspartic acid. In
 other words, if the DL-aspartic acid racemic modification is used, the
 amounts are doubled. If a derivative is used having a molecular weight ten
 percent greater than that of D-aspartic acid, the amounts are increased by ten
 percent to provide the same equivalent molar amount.

29 **5. Benefits**

30 The administration of an effective amount of a D-aspartic acid compound
 31 has many beneficial effects on adult male humans. The administration

1 causes an increase in the levels of testosterone, growth hormone, and/or
 2 insulin-like growth factor 1 in the recipient, regardless of age. The increases
 3 in these hormones, in turn, are believed to cause a large number of
 4 improvements in physical condition, including an increase in muscle mass,
 5 an increase in strength, a decrease in fat, and a reduction in various aging
 6 characteristics. Increases in these hormones are also believed to cause an
 7 improvement in sexual performance.

8 47. The pending patent claims in the application, no. 12/383,682, were
 9 originally stated as follows:
 10

- 11 1. A method of improving the physical condition of an adult male
 12 human, the method comprising administering an effective amount of a D-
 13 aspartic acid compound to an adult male human.
- 14 2. The method of claim 1 wherein the D-aspartic acid compound is
 15 administered by oral ingestion.
- 16 3. The method of claim 2 wherein the D-aspartic acid compound is
 17 administered in an amount of about 1 to 20 grams of D-aspartic acid
 18 equivalent.
- 19 4. The method of claim 3 wherein the D-aspartic acid compound is
 20 administered as a racemic mixture.
- 21 5. The method of claim 1 wherein the D-aspartic acid compound
 22 comprises D-aspartic acid.
- 23 6. The method of claim 1 wherein the D-aspartic acid compound
 24 comprises N-methyl-D-aspartic acid.
- 25 7. The method of claim 1 wherein the D-aspartic acid compound
 26 comprises a salt or an ester of D-aspartic acid.
- 27 8. A method of improving the physical condition of an adult male human
 28 increasing his levels of testosterone, growth hormone, and/or insulin-like
 growth factor 1, the method comprising administering an affective amount
 of a D-aspartic acid compound to an adult male human.

29 48. On or about June 7, 2011, the Patent Office issued an Office Action
 30 Summary, and rejected the pending claims. The examiner noted claims 1 – 8 were
 31 rejected under 35 U.S.C. § 103(a) as being unpatentable over Estienne *et al.*, U.S.
 32 Patent No. 5,691,377. The examiner rejected claims 1 – 8 under 35 U.S.C. §
 33 103(a) as being unpatentable over Simone, U.S. Patent No. 5,397,786, in view of
 34 Pantaleone *et al.*, U.S. Patent No. 5,834,259, and further view of Estienne *et al.*,
 35 U.S. Patent No. 5,691,377 . The examiner rejected Claims 1-5, 7 and 8 under 35

1 U.S. C. 103(a) as being unpatentable over Estienne *et al.* (U.S. 5,691,377) in view
 2 of Pantaleone *et al.* (U.S. 5,834,259). The examiner also rejected claim 1 – 8
 3 under 35 U.S. C. 103(a) as being unpatentable over D'Aniello (Applicant cited
 4 IDS: Brain Research Reviews, 2007, 53, 215 – 234).

5 49. On or about December 7, 2011, the inventor, through his counsel,
 6 filed a Response to Office Action Dated June 7, 2011. In the response, the
 7 inventor, through his counsel, represented that there was no teaching or suggestion
 8 from the prior art cited to increase testosterone levels in human males with the
 9 administration of D-aspartic acid. In particular, the inventor, stated, *inter alia*:

10 D'Aniello describes the effect of intravenous administration of D-
 11 aspartic acid in rats. This results in increase in LH and testosterone in rats.
 12 However, the Examiner makes two false assumptions here: 1) That intra-
 13 peritoneal administration should have the same effect as oral administration;
 14 and 2) That if something is effective on rats it should have the same effect
 15 on humans.

16 For the first false assumption, a lot of drugs have no effect when
 17 administered orally due to low absorption/bioavailability, extensive
 18 metabolism, destruction in stomach acidic, p.h., inability to reach target
 19 tissues, inability to reach high enough blood concentrations, etc. Therefore,
 20 they exist only in injectable forms. Examples include Heparin,
 21 Adrenaline (an aminoacid metabolite), benzylpenicilline, etc. Thousands of
 22 examples can be found. The use of a compound parenterally does in no way
 23 make obvious its use for the same purpose orally nor does it make obvious
 24 the dosing scheme and regime to achieve results.

25 For the second false assumption, if we were to assume that rat studies
 26 had the same effect on humans, no human clinical trials would exist. Many,
 27 many drugs and supplements despite showing promising results in rats show
 28 disappointment or even opposite results in humans. . .

29 Thus, in no way does the effect of the compound on rats render
 30 obvious its therapeutic use in humans . . .

31 50. On or about December 7, 2011, the inventor, through his counsel,
 32 filed a Response to Office Action Dated June 7, 2011. In the response, the
 33 inventor, through his counsel, represented:
 34

35 The applicant, prior to applying for the patent, conducted research to prove
 36 D-aspartic acid does indeed increase testosterone levels in humans and
 37 established a dosing regime. This by itself is true research and the patent
 38 office should endorse it as it promotes invention. . .

1 The applicants findings are further confirmed by the following study, which
 2 further proved the applicant did indeed spend time and money to research
 3 the compound before applying [citing *The Role and Molecular mechanism*
 4 of *D-aspartic Acid in the Release and Synthesis of L.H. and Testosterone in*
Humans and Rats, Enza Topo et al, *Reproductive Biology Endocrinology*,
 5 2009; 7:120.]

6 51. On or about December 22, 2011, the inventor, through his counsel, filed
 7 a Supplemental Response to Office Action Dated June 7, 2011. In the response,
 8 the inventor, through his counsel, represented:

9 In addition to what was already submitted in the Response filed
 10 December 7, 2011 (hereby incorporated by reference), Applicant notes the
 11 following.

12 D'Aniello describes the effect of intravenous administration of D-
 13 aspartic acid in rats. This results in increase in L.H and testosterone in rats.
 14 However, the Examiner makes two false assumptions here: 1) That intra-
 15 peritoneal administration should have the same effect as oral administration;
 16 and 2) That if something is effective on rats it should have the same effect
 17 on humans. . .

18 In addition as we previously stated, the researchers of the foregoing
 19 study themselves exclaimed at the beginning of the study in the background
 20 section that (emphasis added) [citing *The Role and Molecular mechanism of*
D-aspartic Acid in the Release and Synthesis of L.H. and Testosterone in
Humans and Rats, Enza Topo et al, *Reproductive Biology Endocrinology*,
 21 2009; 7:120]:

22 “Although numerous studies have been conducted on this
 23 matter, no investigations have been until now on the effects of D-Asp
 24 on the secretion of LH and testosterone in humans, and neither has the
 25 molecular mechanism by which D-Asp triggers its action in the
 26 synthesis and release of hormones investigated”

27 By their very own words the effects of DAA at the time of the study
 28 (almost two years after the priority date of the present patent application) on
 29 LH and testosterone secretion in HUMANS remained unknown.

30 52. On or about January 12, 2012, the Patent Office issued a final
 31 rejection in an Office Action mailed on January 17, 2012. The examiner noted
 32 claims 1 – 5, 7, 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable
 33 over Estienne *et al.*, U.S. Patent No. 5,691,377, in view of Pantaleone *et al.*, U.S.
 34 Patent No. 5,834,259.

35 The examiner rejected claims 1 – 5, 7, 8 under 35 U.S.C. § 103(a) as being
 36 unpatentable over Simone, U.S. Patent No. 5,397,786, in view of Pantaleone *et al.*,

1 U.S. Patent No. 5,834,259. The examiner also rejected claim 1 – 5, 7, 8 under 35
 2 U.S. C. 103(a) as being unpatentable over D'Aniello (Applicant cited IDS: Brain
 3 Research Reviews, 2007, 53, 215 – 234).

4 53. On or about April 17, 2012, the inventor, through his counsel, filed an
 5 Amendment After Final Rejection, wherein he amended claim 1 and 3, and
 6 cancelled claims 2, and 5 – 8. Claim 1 was amended, *inter alia*, to include the
 7 Markush group “selected from the group consisting of D-aspartic acid, D-Aspartate
 8 salts, and D-aspartate esters” purportedly to distinguish the prior art.

9 54. On or about April 17, 2012, the inventor, through his counsel, made
 10 the following statements, *inter alia*, to the Patent Office:

11 This study/article is not prior art. Therefore, because it is peer reviewed,
 12 scrutinized, etc. this article is strong evidence that the present invention is
 13 not obvious, [citing *The Role and Molecular mechanism of D-aspartic Acid*
in the Release and Synthesis of L.H. and Testosterone in Humans and Rats,
 14 Enza Topo et al, *Reproductive Biology Endocrinology*, 2009; 7:120] . . .

15 Thus, by their very own words the effects of DAA at the time of the study
 16 (almost two years after the priority date of the patent application) on LH and
 17 testosterone secretion on HUMANS remained unknown. . .

18 The examiner argues because NMDA is an analog compound of D-aspartic
 19 Acid a person of ordinary skill in the art would be motivated use [sic] for the
 20 same purposes. The examiner further argues (without evidence whatsoever
 21 placed on the record) that they are the “same compound”, and that NMDA
 22 (even though not taught in Estiene) would increase levels of testosterone,
 23 growth hormone, and/or insulin-like growth factor 1 as Applicant claimed
 24 for D-Aspartic acid in Claim 8. . .

25 Claim 1 has been amended. Among other things, claim 1 includes the
 26 Markush group “ a D-aspartic acid, D-Aspartate salts, and D-aspartate
 27 esters” . . .

28 Moreover the presumption of obvious based on a reference disclosing
 29 structurally similar compounds may be overcome where there is a showing
 30 there is no reasonable expectation of similar properties in structurally similar
 31 compounds . . . [emphasis in the original]

32 As evidence that there is no reasonable expectation of similar properties in
 33 DAA as compared to NMDA . . .

1 55. On or about May 10, 2012, the Patent Office issued Notice of
 2 Allowance. In the Notice, the examiner stated several "Reasons for Allowance,"
 3 including, *inter alia*:

4 Applicant's arguments have been fully considered and found persuasive . . .

5 The closest prior art are Estienne (U.S. 5,591,377), Simone (US 5,397,786)
 6 and D'Aniello (Applicant cited IDS: Brain Research Reviews, 2007, 53,
 215-234) . . .

7 The prior art D'Aniello (Brain Research Reviews, 2007) does not describe
 8 oral administration of D-Asp or do not teach administration of D-Asp to
 9 humans. The effect of D-Asp at the time of the instant application was filed
 on LH and testosterone secretion on humans remained unknown.

10 56. At all times relevant thereto, the arguments made to the Patent Office
 11 during the prosecution of the '908 patent to overcome the various prior art
 12 rejections were made to convince the Patent Office that the effect of D-aspartic at
 13 the time of the patent application was filed on LH and testosterone secretion on
 14 humans remained unknown.

15 57. At all times relevant hereto, the inventor, Patrick Arnold, frequently
 16 commented on the internet concerning the topics of fitness and supplements,
 17 including methods of increasing testosterone.

18 58. On or about October 10, 1996, in an on-line discussion concerning the
 19 "Best Way to Legally Increase Testosterone?", the inventor Patrick Arnold
 20 disclosed "D-aspartic acid (or N-methyl-D-aspartate)." This statement was publicly
 21 posted in a forum specifically addressing "good, safe and legal methods of
 22 increasing testosterone" in human males.

23 59. At all times relevant hereto, the arguments made to the Patent Office
 24 during the prosecution of the '908 patent to convince the Patent Office that the
 25 effect of D-aspartic at the time of the patent application was filed on LH and
 26 testosterone secretion on humans remained unknown were false and deceptive.

1 60. At all times relevant hereto, the statements made to the Patent Office
2 in the application(s) that matured into '908 patent that the effect of D-aspartic at
3 the time of the patent application was filed on LH and testosterone secretion on
4 humans remained unknown were false and deceptive.

5 61. At all times relevant hereto, during the prosecution of the '908 patent,
6 the inventor, Patrick Arnold, withheld information material to the patentability
7 concerning the subject matter of the '908 patent, including but not limited to,
8 whether the effect of D-aspartic at the time of the patent application was filed on
9 LH and testosterone secretion on humans remained unknown.

10 62. The inventor, Patrick Arnold, publically disclosed in a printed media
11 on October 10, 1996, that D-aspartic acid and N-methyl-D-aspartate increases
12 testosterone, such statement was material to patentability, and Mr. Arnold failed to
13 report this public disclosure to the Patent Office, which was his duty under 37
14 C.F.R. § 1.56.

15 63. At all times relevant hereto, the above recited acts constituted fraud
16 and/or inequitable conduct in the proceedings before the Patent Office during the
17 prosecution of the '908 patent.

18 64. Reaction Nutrition is therefore entitled to judgment that the '908
19 patent is unenforceable, a declaration that this case is exceptional in favor of
20 Reaction Nutrition under 35 U.S.C. § 285 and that Reaction Nutrition be awarded
21 its reasonable attorneys' fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Reaction Nutrition prays for the following relief:

24 A. That Judgment be entered in favor of Reaction Nutrition and against
25 Plaintiff on each and every count of the Complaint and on each and every count of
26 its Counterclaim;

1 B. That Judgment be entered declaring that neither Reaction Nutrition nor
2 the Reaction Nutrition's products have not infringed the '908 patent;

3 C. That Judgment be entered declaring that Plaintiff is equitably estopped
4 from alleging infringement of the '908 patent;

5 D. That Judgment be entered declaring that Plaintiff is precluded from
6 obtaining injunctive relief, money damages, costs, and/or attorneys' fees for any
7 alleged infringement by Reaction Nutrition and/or the Reaction Nutrition's
8 products;

9 E. That Judgment be entered declaring the claims of the '908 patent invalid;

10 F. That Judgment be entered permanently enjoining and restraining
11 Plaintiff, its officers, agents, servants, employees and attorneys, and all others
12 acting for, on behalf of, or in active concert or participation with any of them, from
13 stating, implying, or suggesting that infringes the patent-in-suit;

14 G. That Judgment be entered declaring that this case is exceptional in favor
15 of Reaction Nutrition under 35 U.S.C. § 285 and that Reaction Nutrition be
16 awarded its reasonable attorneys' fees and expenses;

17 H. That Reaction Nutrition be awarded its costs in this action; and

18 I. That Reaction Nutrition be awarded such other and further relief as the
19 Court may deem just and proper.

20 ///

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DEMAND FOR JURY TRIAL

Reaction Nutrition demands a trial by jury of all issues so triable in this action.

Dated: January 4, 2013

VENABLE LLP

By: Daniel S. Silverman

And

Dated: January 4, 2013

CANTOR COLBURN LLP

By: William Cass by oss
William J. Cass

Attorneys for Defendant
REACTION NUTRITION, LLC

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

PROOF OF SERVICE (Federal-delete paragraphs that do not apply)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **January 4, 2013**, I served a copy / original of the foregoing document(s) described as **DEFENDANT REACTION NUTRITION, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND DEMAND FOR JURY TRIAL** on the interested parties in this action addressed as follows

SEE ATTACHED MAILING LIST

By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

BY MAIL (FRCP 5(b)(1)(C)): I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 4, 2013, at Los Angeles, California.

 Jan Contreras
Jan Contreras

MAILING LIST

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2		
3	Richard H. Hikida Scott J. Ferrell Tyler J. Woods Newport Trial Group 895 Dove Street, Suite 425 Newport Beach, CA 92660	<i>Attorneys for Plaintiff</i>
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		ANSWER OF DEFENDANT REACTION NUTRITION, LLC TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT
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